IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4657 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

JAGJIVAN GORDHANBHAI

Appearance:

1. Special Civil Application No. 4657 of 2001

Mr.Digant P. Joshi, ASSISTANT GOVERNMENT PLEADER for Petitioner No. 1-2

MRS DT SHAH for Respondent No. 1-2

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 27/02/2003

ORAL JUDGEMENT

The present petition is filed challenging the judgement and award of the Labour Court, Surendranagar in

Reference (LCS) No.239 of 1991 dated 9.4.1995. The learned Judge was pleased to order reinstatement of the respondent workmen with continuity of service and taking into consideration the contentions raised by the present petitioners and the deposition of the respondent workmen that they were getting some work of stray labour, was pleased to award only Rs.250/-, per month from the date of last payment of wages to these workmen for the intervening period.

2. Mr.Digant P. Joshi, the learned Assistant Govt. Pleader strenuously tried to assail the judgement and award of the learned Judge on the ground that the respondent workmen were daily wagers; when they did not attend the work, the department in order to continue the activity of irrigation had to engage some other daily wagers. Mr.Joshi tried to explain the observations made by the learned Judge for violation of the provisions of sections 25(F), (G) & (H) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). In the present case it has come on record that as many as 30-35 daily wagers are working after the present workmen were not allowed to work. It is also on record by way of deposition of S.K. Patalia, who was examined by the establishment at exhibit 19 that he had taken charge of the sub-division on 29.3.1993 and since then at least 14 other daily wagers were engaged. It is provided under sec.25(H) of the Act that if the establishment has to engage any new labourer, it has to call old labourers offering job. However, in the present case the establishment has not produced any material and it is also not the case of the establishment that it had called the present respondent workmen to resume duty. So far as the application of section 25(F) of the Act is concerned, the establishment has not produced any material to dislodge the case of the respondent workmen. The documentary evidence was in possession of the establishment in the form of muster rolls, which the establishment chose to produce only for a particular period/ year and not for the remaining period/ years. The case of the respondent workmen was that they had worked for seven years, then the documentary evidence for that entire period should have been produced. Therefore, the learned Judge was right in drawing adverse inference against establishment. In light of the observations made by the learned Judge and the findings recorded, breach of section 25(F), (G) & (H) cannot be assailed successfully by the learned Assistant Govt. Pleader. The petition is dismissed. Interim relief is vacated. Rule is discharged. No order as to costs. Ms.D.T. Shah, the learned advocate for the respondent workmen submitted

that it will not be inappropriate to direct the petitioner establishment to comply with the award of the year 1995 which they have chosen not to comply with so far.

4. The petitioner establishment shall comply with the award within six weeks from the date of receipt of this judgement.

(Ravi R. Tripathi, J.)

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